

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SCHAWBEL TECHNOLOGIES, LLC

Plaintiff,

v.

THE HEAT FACTORY USA, INC.

Defendant.

Civil Action No. 1:18-CV-10227-LTS

**DEFENDANT’S MOTION
FOR
LEAVE TO FILE REPLY MEMORANDUM**

Defendant The Heat Factory USA, Inc. (“Heat Factory”) moves, pursuant to Local Rule 7.1(b)(3), for leave to file a five-page reply memorandum and a supporting declaration to address new issues raised by Schawbel Technologies, LLC’s (“Schawbel”) Opposition to Heat Factory’s Motion to Dismiss, Transfer or Stay (the “Opposition”). [ECF No. 42]

In support of this motion, Heat Factory states as follows:

1. The Opposition discloses that after Heat Factory’s Motion to Dismiss, Transfer or Stay (the “Motion”) [ECF No. 36] was filed (and just before the Opposition was filed) Schawbel removed the California state court action involving the parties to the United States District Court for the Southern District of California.

2. The fact that the California action is now in Federal court requires the consideration of issues that were not present when the Motion was filed, including application of the “first-filed” doctrine and whether the date of filing or date of removal is the appropriate benchmark.

3. In addition, it is necessary for Heat Factory to address the incorrect claim made in the Opposition that Heat Factory has a regular and established place of business in Massachusetts by virtue of potential sales of its products within the Commonwealth by third parties.

4. The Opposition materials do not explain that the belated removal of the California action to federal court was effected through Schawbel's assertion of a patent claim in its "Cross-Complaint" and that the case now pending in the Southern District of California — like this action — has been characterized by Schawbel as a patent claim.

5. As none of the materials related to the removal were included with the Opposition, Heat Factory seeks to file a supplement declaration attaching the California notice of removal, civil cover sheet and Schawbel's "Cross-Complaint" and addressing Schawbel's role in the pace of the California proceedings.

6. Heat Factory's proposed Reply Memorandum is attached as **Exhibit 1** and the proposed Supplemental Declaration of Attorney Thomas N. Fay is attached as **Exhibit 2**.

WHEREFORE, Heat Factory respectfully requests that the Court allow this motion and grant it leave to file the attached reply memorandum and supplemental declaration.

Respectfully submitted,

/s/ Gina M. Puls
Lawrence S. Delaney, BBO No. 557063
Gina M. Puls, BBO No. 697122
Demeo LLP
200 State Street
Boston, Massachusetts 02109
LDelaney@DemeoLLP.com
(617) 263-2600

Dated: August 28, 2018

LOCAL RULE 7.1(a)(2) CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), I hereby certify that I conferred in good faith with Anthony Leone, counsel for the Plaintiff, on August 28, 2018 in an effort to narrow or resolve the issues presented in this motion.

/s/ Gina M. Puls

Gina M. Puls

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (“NEF”) on August 28, 2018.

/s/ Gina M. Puls

Gina M. Puls